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March 21, 1995

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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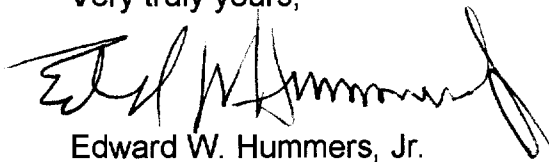
Re: Notice of Proposed Rule Making
WT Docket No. 95-5

Dear Mr. Caton:

Transmitted herewith on behalf of Nationwide Communications Inc., are an original and four copies of the Comments of Nationwide Communications Inc. in the above referenced rule making.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,



Edward W. Hummers, Jr.
Counsel for
Nationwide Communications Inc.

EWB/bi

Enclosure

cc: Roy J. Stewart, Esq.; Robert Greenberg (both w/enc.) By Hand Delivery

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Streamlining the Commission's Antenna
Structure Clearance Procedure

and

Revision of Part 17 of the Commission's
Rules Concerning Construction, Marking,
and Lighting of Antenna Structures

WT Docket No. 95-5

DOCKET FILE COPY ORIGINAL

TO: The Commission

COMMENTS OF NATIONWIDE COMMUNICATIONS INC.

Nationwide Communications Inc. ("Nationwide"), by counsel, files the following comments with regard to the Commission's Notice of Proposed Rule Making, adopted on January 12, 1995 and released on January 20, 1995, in the above referenced proceeding ("*NPRM*").

Nationwide is the licensee of ten FM stations and two AM stations located throughout the United States and is both the lessor and lessee of antenna supporting structures. Nationwide supports the proposed rules, as an efficient method of processing and regulating antenna structures and simplifying the radio facilities application process. However, Nationwide believes that the Commission must clarify the nature and extent of the secondary responsibility for tower

maintenance it seeks to impose upon broadcast licensees under proposed §73.1213. It also requests that the Commission, at this time, establish an informal procedure to rectify deviations, which are inevitable under the proposed tower registration, between the structure registration information to be filed by structure owners and assembled in the new tower database and the structure information already recorded on existing station authorizations.

Responsibility for Tower Maintenance

In paragraph 21 of the *NPRM* the Commission points to the fact that it now has jurisdiction over tower owners, including the right to issue forfeitures for rule violations, and proposes to

hold the [tower] owner primarily responsible, in the first instance, for the installation and maintenance of painting and/or lighting of each antenna structure. This means that the Commission would look first toward antenna structure owners to ensure that their structures are painted and lighted in accordance with Part 17. In cases where reliance on the structure owner proves ineffective, the Commission would turn toward the tenant licensees and permittees to ensure that the structure is properly painted and lighted. For instance, if the structure owner cannot be reached, the Commission would have the option to require tenant licensees and permittees to maintain the structure.

Effectuating language is included in the rule part governing the respective radio services. See, proposed Sections 21.111, 22.365(a), 23.39(b), 25.113(d), 73.1213(b), 74.22, 78.63, 80.110, 87.75, 90.441 and 94.111. In addition to placing the responsibility for tower maintenance upon the tower owner, each of those sections includes language similar to the following: "In the event of default by the tower owner, each licensee or permittee shall be responsible for ensuring that the

structure complies with applicable painting and lighting requirements."¹

Nationwide believes that the issue of secondary liability must be clarified by the Commission. In the real world, shared responsibility inevitably falls upon the diligent while the laggard avoids its obligation. It is important that the Commission make clear that it will hold a licensee or permittee accountable only after it has "look[ed] first toward antenna structure owners" and would turn to the licensee or permittee only "where reliance on the structure owner proves ineffective." *NPRM* at ¶ 21. It is appropriate that the Commission first look to the structure owner. The Commission should seek to hold a licensee responsible only after it has advised the licensee of a tower painting or lighting deficiency. Otherwise, a licensee, to avoid a forfeiture for a violation, would have no alternative other than to assume responsibility in the first instance. That is, where a licensee leases space on a tower which is properly painted and lighted at the commencement of the lease, the licensee should be able to rely upon a contractual provision in the tower lease under which the tower owner assumes the responsibility for tower painting and lighting. Only in those instances where and when the FCC gives notice to a licensee of a hazardous condition and a licensee fails to act within a reasonable period of time, should a licensee be accountable and subject to a forfeiture. To conclude otherwise, would make the Commission's objective to hold a structure owner accountable a nullity.

Deviations in Structure Specifications

¹ For some reason, the language is not precisely the same in each referenced section of the proposed rules.

NCI strongly supports the Commission's position that the proposed structure registration and database be as accurate as is possible with regard to structure location, elevation above mean sea level and overall height above ground. In some cases, it now may be possible to provide more precise information than was possible when a structure was first reported in a facilities application. For example, differential GPS now permits a precise determination of structure location and elevation. Hopefully, the structure registration system will encourage tower owners to verify the precise location and height of towers.

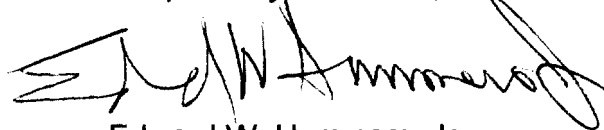
Inevitably, the registration of existing towers upon which antennas have been located will result in deviations between the tower specifications set forth in the FCC Form 854 and recorded in the new tower database and the authorizations of the stations located upon the tower. Under present broadcast regulation, were such a deviation to be discovered, a licensee would be required to file, in most cases, an application for a construction permit (FCC Form 301) and an application for license (FCC Form 302). Similar requirements apply to other services. The Commission notes that, on average, there are 12 licensees authorized to transmit from each antenna structure. *NPRM* at ¶ 20. Were each licensee required to file construction permit and license applications to correct deviations between their authorizations and the tower registration information, it would place a processing burden upon the Commission and a time and expense burden upon licensees.²

² To the extent such burdens would discourage licensee tower owners from filing the most accurate tower registration information in lieu of the unverified information which may be reflected on the licensee's station authorization, the new tower database would be compromised and not as accurate as is possible.

On the other hand, the correction of the small deviations in station authorizations would have no practical significance. NCI recommends that the specifications set forth in the tower registration be given preference and that licensees be permitted to modify their station authorizations to reflect the tower registration specifications by the filing of a letter or other informal notification. To the extent the use of the tower registration specifications result in a minor violation of a rule (e.g., FM spacing), the facilities as originally authorized and constructed should be grandfathered, as they would represent the facts under which stations have been operating without any apparent injury to the public interest.³

It is important for the Commission to address this eventuality at this time rather than wait until the circumstance is upon it and resources must be reallocated to address the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward W. Hummers, Jr.", written over a horizontal line.

Edward W. Hummers, Jr.
Counsel for
Nationwide Communications Inc.

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March 21, 1995

³ A similar technical short-spacing issue might arise where the tower registration utilizes North American Datum of 1983 coordinates and the original spacing was calculated using the 1927 Datum.